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20 IN THE UNITED STATES DISTRICT COURT
21
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA
23
24 OAKLAND DIVISION

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26 ELECTRONIC FRONTIER FOUNDATION,) Case No. 4:09-CV-03351-SBA
27 Plaintiff,)
28 vs.)
29 CENTRAL INTELLIGENCE AGENCY, ET) DECLARATION OF NATHAN
30 AL.,) CARDOZO IN SUPPORT OF
31 Defendants.) PLAINTIFF'S MOTION FOR
32) PARTIAL SUMMARY JUDGMENT
33
34 _____)

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36 1. I am an attorney of record for the plaintiff in this matter and a member in good
37 standing of the California State Bar, and am admitted to practice before this Court. I have personal
38 knowledge of the matters stated in this declaration. If called upon to do so, I am competent to
39 testify to all matters set forth herein.

40 Case No. 4:09-CV-03351-SBA

41 DECLARATION OF NATHAN CARDOZO IN SUPPORT OF
42 PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

1 2. Plaintiff Electronic Frontier Foundation (“EFF”) is a non-for-profit corporation
2 established under the laws of Massachusetts with its principal place of business in San Francisco.

3 3. Attached hereto as Exhibit 1 is a true and correct copy of a Freedom of Information
4 Act (“FOIA”) request sent by facsimile on February 25, 2008 by EFF staff attorney Marcia
5 Hofmann to the Central Intelligence Agency (“CIA”). EFF requested documents relating to reports
6 from the agency to the Intelligence Oversight Board (“IOB”).

7 4. Attached hereto as Exhibit 2 is a true and correct copy of a FOIA request sent by
8 facsimile on February 25, 2008 by EFF staff attorney Marcia Hofmann to the Department of
9 Defense (“DOD”). EFF requested documents relating to reports from the agency to the IOB.

10 5. Attached hereto as Exhibit 3 is a true and correct copy of a FOIA request sent by
11 facsimile on February 25, 2008 by EFF staff attorney Marcia Hofmann to DOD’s component the
12 Defense Intelligence Agency (“DIA”). EFF requested documents relating to reports from the
13 agency to the IOB.

14 6. Attached hereto as Exhibit 4 is a true and correct copy of a FOIA request sent by
15 facsimile on February 25, 2008 by EFF staff attorney Marcia Hofmann to the National Security
16 Agency (“NSA”). EFF requested documents relating to reports from the agency to the IOB.

17 7. Attached hereto as Exhibit 5 is a true and correct copy of a FOIA request sent by
18 facsimile on February 25, 2008 by EFF staff attorney Marcia Hofmann to the Department of
19 Justice’s (“DOJ”) component the Federal Bureau of Investigation (“FBI”). EFF requested
20 documents relating to reports from the agency to the IOB.

21 8. Attached hereto as Exhibit 6 is a true and correct copy of a FOIA request sent by
22 facsimile on February 25, 2008 by EFF staff attorney Marcia Hofmann to the Office of the Director
23 of National Intelligence (“ODNI”). EFF requested documents relating to reports from the agency
24 to the IOB.

1 9. In a letter dated June 23, 2009 the CIA acknowledged that it had received EFF's
2 February 25, 2008 FOIA request, and informed EFF that was "unable to estimate when [its] review
3 will be completed." A true and correct copy of this letter is attached hereto as Exhibit 7.

4 10. By letter dated June 8, 2009 the NSA made an interim response to EFF's February
5 25, 2008 FOIA request. A true and correct copy of the letter accompanying the NSA's response is
6 attached hereto as Exhibit 8.

7 11. By letter dated June 19, 2009, EFF appealed NSA's partial denial of the February
8 25, 2008 FOIA request. A true and correct copy of EFF's appeal is attached hereto as Exhibit 9.

9 12. By letter dated June 26, 2009, the NSA acknowledged receiving EFF's June 19,
10 2009 appeal and indicated that it "will be unable to provide [EFF] a timely response." A true and
11 correct copy of the letter is attached hereto as Exhibit 10.

12 13. On June 18, 2009, I called DOD's FOIA Requester Service Center to check the
13 status of EFF's February 25, 2008 FOIA request. To date, I have received no response from DOD.

14 14. On June 18, 2009, I called DIA's FOIA Requester Service Center to check the status
15 of EFF's February 25, 2008 FOIA request. I was told that EFF's request was being processed but
16 DIA did not indicate when it would finish processing the request.

17 15. In a letter dated December 8, 2008 FBI acknowledged that it had received EFF's
18 February 25, 2008 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit
19 11.

20 16. On June 18, 2009, I called FBI's FOIA Requester Service Center to check the status
21 of EFF's February 25, 2008 FOIA request. To date, I have received no response from FBI.

22 17. In a letter dated August 13, 2009 ODNI acknowledged that it had received EFF's
23 February 25, 2008 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit
24 12.

1 18. Attached hereto as Exhibit 13 is a true and correct copy of a FOIA request sent by
2 facsimile on February 13, 2008 by EFF staff attorney Marcia Hofmann to the DOJ's component the
3 Office of the Attorney General ("OAG"). EFF requested documents relating to reports submitted
4 to the OAG by the IOB and other agencies.

5 19. In a letter dated March 5, 2009 OAG acknowledged that it had received EFF's
6 February 13, 2009 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit
7 14.

8 20. To date, OAG has not notified EFF of its determination whether to comply with the
9 February 13, 2009 FOIA request.

10 21. Attached hereto as Exhibit 15 is a true and correct copy of a FOIA request sent by
11 facsimile on June 19, 2009 by me to the CIA. EFF requested documents relating to reports from
12 the agency to the IOB.

13 22. Attached hereto as Exhibit 16 is a true and correct copy of a FOIA request sent by
14 facsimile on June 19, 2009 by me to the DOD. EFF requested documents relating to reports from
15 the agency to the IOB.

16 23. Attached hereto as Exhibit 17 is a true and correct copy of a FOIA request sent by
17 facsimile on June 19, 2009 by me to DOD's component DIA. EFF requested documents relating to
18 reports from the agency to the IOB.

19 24. Attached hereto as Exhibit 18 is a true and correct copy of a FOIA request sent by
20 facsimile on June 19, 2009 by me to the NSA. EFF requested documents relating to reports from
21 the agency to the IOB.

22 25. Attached hereto as Exhibit 19 is a true and correct copy of a FOIA request sent by
23 facsimile on June 19, 2009 by me to DOJ's component OAG. EFF requested documents relating to
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1 reports from the Department of Justice to the IOB as well as reports submitted to the OAG by the
 2 IOB.

3 26. Attached hereto as Exhibit 20 is a true and correct copy of a FOIA request sent by
 4 facsimile on June 19, 2009 by me to DOJ's component FBI. EFF requested documents relating to
 5 reports from the agency to the IOB.

6 27. Attached hereto as Exhibit 21 is a true and correct copy of a FOIA request sent by
 7 facsimile on June 19, 2009 by me to the ODNI. EFF requested documents relating to reports from
 8 the agency to the IOB as well as reports submitted to the ODNI by the IOB.

9 28. In a letter dated June 23, 2009 FBI acknowledged that it had received EFF's June
 10 19, 2009 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit 22.

11 29. In a letter dated July 3, 2009 DOD acknowledged that it had received EFF's June
 12 19, 2009 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit 23.

13 30. In a letter dated July 29, 2009 DIA acknowledged that it had received EFF's June
 14 19, 2009 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit 24.

15 31. In a letter dated June 29, 2009 ODNI acknowledged that it had received EFF's June
 16 19, 2009 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit 25.

17 32. In a letter dated July 13, 2009 OAG acknowledged that it had received EFF's June
 18 19, 2009 FOIA request. A true and correct copy of this letter is attached hereto as Exhibit 26.

19 33. To date, neither the CIA, DOD, NSA, DOJ nor ODNI has notified EFF of its
 20 determination whether to comply with EFF's June 19, 2009 requests.

21 34. EFF's repeated efforts to negotiate a production schedule with defendants against
 22 whom EFF now moves for partial summary judgment have been unsuccessful.

23 35. On September 2, 11, and 15, 2009, I spoke with Joel McElvain, Senior Counsel at
 24 the Department of Justice, to discuss the possibility of negotiating a processing schedule for EFF's

1 Freedom of Information Act (“FOIA”) requests or, in the alternative, the scheduling for this
2 Motion for Partial Summary Judgment. On September 28, 2009, the parties stipulated to final
3 response dates for EFF’s FOIA requests to defendants Department of Homeland Security,
4 Department of State, and Department of Energy. To date, the parties have been unable to agree
5 upon a processing schedule for EFF’s requests to the CIA, DOD, DIA, NSA, OAG, and ODNI.
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8 I declare under penalty of perjury of the laws of the State of California that the foregoing is
9 true and correct to the best of my knowledge and belief. Executed September 28, 2009 in San
10 Francisco, California.

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12 */s/ Nathan Cardozo*
13 Nathan Cardozo

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